

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CATHEY GAY FRAZIER

Respondent.

Case No. 2007-201

OAH No. 2008010427

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on **June 9, 2008.**

IT IS SO ORDERED this **8th** day of **May**, 2008.

LaTranene W Tate

Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CATHEY GAY FRAZIER

Registered Nurse License No. 475558,

Respondent.

Case No. A 2007-201

OAH Case No. N2008010427

PROPOSED DECISION

This matter was heard before Marilyn A. Woollard, Administrative Law Judge (ALJ) for the Office of Administrative Hearings (OAH), State of California, on February 26, 2008, in Sacramento, California.

Deputy Attorney General Jeffrey M. Phillips represented complainant Ruth Ann Terry, in her official capacity as the Executive Officer of the Board of Registered Nursing (Nursing), Department of Consumer Affairs.

Respondent Cathey Gay Frazier appeared and represented herself.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties offered oral closing arguments. The record was then closed, and the matter was submitted for decision on February 26, 2008.

FACTUAL FINDINGS

1. On January 22, 1993, the Board issued registered nurse license No. 475558 to Cathey Gay Frazier. Unless renewed, revoked, or suspended, the license will expire on August 31, 2008.
2. On January 18, 2007, the Board filed an Accusation against respondent, requesting that her license be revoked or suspended based upon misdemeanor convictions for driving under the influence of alcohol (DUI) and related vehicle code

violations. The Board also requested that respondent be ordered to pay the costs of its investigation and enforcement of this case.

3. On February 21, 2007, respondent filed her notice of defense.

Respondent's DUI Convictions

4. On October 22, 2002, in *People of the State of California v. Cathey Gay Frazier* (02006117), before the Yolo County Superior Court, respondent plead guilty to a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (DUI at .08 or above), with an enhancement under Vehicle Code section 23578 for a prior DUI conviction in 1995. The underlying offense occurred on September 30, 2002, when respondent's blood alcohol was measured at .20 percent.

Respondent was sentenced to 15 days in county jail and 48 months of summary probation. Respondent was ordered to complete an 18-month alcohol education program, and to pay fines and fees. Respondent's driver's license was restricted for 18 months to employment/alcohol counseling-only transportation.

5. On March 10, 2004, in *People of the State of California v. Cathey Gay Frazier* (CR TR03-0000248), before the Yuba County Superior Court, respondent plead no contest to a misdemeanor violation of Vehicle Code section 23152, subdivision (a) (DUI), with an enhancement for her 2002 prior DUI conviction. The underlying offense occurred on February 1, 2003, when the vehicle respondent was driving was observed weaving. The responding police officers found respondent passed out behind the driving wheel in a left turn lane. Respondent's breathalyzer results were .18/.19 blood alcohol concentration.

Respondent was sentenced to 10 days in county jail and 48 months of summary probation. In addition, respondent's driver's license was suspended for two years, and she was ordered to complete an 18-month sobriety program. Respondent was ordered to pay a fine of \$1,918 and additional fees.

6. Respondent did not dispute any of the convictions alleged in the Accusation. These convictions included two additional misdemeanor convictions for violation of Vehicle Code section 14601.5, subdivision (a), for driving at a time when her driving privilege was suspended or revoked.¹

Respondent's first such conviction was entered on January 23, 2003, in Yuba County Superior Court No. CR-TR-020001874, based upon her conduct of October 30, 2002. Her second such conviction was entered on March 25, 2004, in Sutter County Superior Court No. CR-TR-03-0002834, based upon her conduct on October 23, 2003.

¹ The court documents for these convictions were not offered by the Board.

Evidence of Rehabilitation

7. Respondent offered evidence that persuasively demonstrated that her life and her use of alcohol has changed significantly since 2003.

8. Respondent testified that she started “going downhill” with alcohol in 2000, after she was involved in a motor vehicle accident that resulted in multiple surgeries and disabled her for several years. During this time, respondent could not work and she began to drink heavily. Respondent became romantically involved in a “bad relationship” with a man who also had an alcohol problem. Together, they drank and fought.

9. After approximately four years, respondent realized that she was drowning. Respondent had chosen to be a nurse and to be helpful in her community. She realized that by abusing alcohol, she had become a person she did not wanted to be. Respondent sought help from county mental health, which offered her a rehabilitation program.

10. On September 29, 2005, respondent successfully completed a 60-day residential treatment program with Progress House Chemical Dependency Treatment in Nevada City, California. As part of this program, respondent began to attend Alcoholics Anonymous (AA) meetings, which she continued after her release from Progress House. On release from this program, respondent and her then 16-year-old son lived with her adult daughter.

11. Respondent realized the extent to which her alcohol abuse negatively affected her family. While she was in rehabilitation, her son began to drink heavily. He later became involved in criminal charges through the juvenile court for public drunkenness, and was ordered into rehabilitation. For two years, respondent and her son worked on rehabilitation together, through the Families in Transition (FIT) program sponsored by Yuba County Mental Health. The FIT Program required respondent and her son to attend AA meetings and individual and family counseling, to participate in testing, and to go to juvenile court every month. Respondent had an AA sponsor to help her, and she attended meetings approximately three times a week. Respondent and her son completed this program in April 2007.

12. In support of her testimony, respondent provided a letter from Sutter-Yuba Mental Health Services, dated April 13, 2007, which confirmed she and her family had received program services from December 9, 2005 through April 13, 2007. She also provided AA meeting schedules and directories from June 2005 through spring 2006, with names, notes and meeting dates.

13. Respondent’s “sobriety date” is August 1, 2005, the date she entered rehabilitation at Progress House. Respondent’s alcoholic beverage of choice is beer, with which she had one relapse in the winter of 2006.

Respondent testified that she has a “suitcase” full of relapse prevention techniques. Her principal technique is to seek support from her family. She also tries to be aware of and to change her thinking, which she does by reading, listening to music, and journaling. During these exercises, respondent tries to understand what issues she is thinking about, her stressors, and her “triggers.” Other techniques involve selecting different activities. For example, at a social occasion where friends are drinking, respondent will dance. Respondent has some connection to her church of origin through a friend, and occasionally attends church.

14. After her last DUI, respondent chose not to own a car, and she does not have a license. She depends on her son or daughter for transportation, including to work. Due to transportation difficulties, respondent’s attendance at AA meetings declined until she stopped attending meetings and lost contact with her sponsor approximately one year ago.

15. Respondent now focuses her energies on her job and family. Her son still lives with her and her daughter has adopted six children. Respondent is actively involved with her children and grandchildren.

16. For the past approximately 18 months, respondent has worked full time as a registered nurse at Sutter North Medical Foundation in the Procedure Center (PC). Her November 2006 job evaluation characterized her as an “asset” to the PC. She is a “team player” who “works well with employees, physicians and the CRNAs.” Respondent is noted to be “good with our patients and the patients have complimented her on the Patient Surveys.” Respondent testified that the contents of this evaluation have remained consistent. No current letters or evaluations from her employer were provided.

17. Respondent has participated in continuing education seminars, sponsored by Fremont Rideout Hospital in Marysville, Sutter North Medical Foundation, and through the NCSGNA, an association for gastroenterology nurses and associates. She provided certificates for this training as follows:

April 16, 2003	Advanced Cardiac Life Support (ACLS) Prep Class #1	4 hours
April 23, 2003	ACLS Prep Class #2	4 hours
May 2, 2003	ACLS Initial Provider	8 hours
Sept. 9 - 10, 2006	NCSGNA [GI- specific courses]	8 hours
Sept. 13, 2003	ECG - An Interactive Workshop	2 hours
Sept. 12 – 13, 2003	Cardiovascular Update for Primary Care	6 hours

BOARD OF REGISTERED NURSING

Sept. 28, 2006	Cardiac Electrophysiology Update	1 hour
Oct. 27 -28, 2006	ACLS Certification Course	14 hours
Nov. 9, 2006	Reviewing Medicare Guidelines for the Timely and Appropriate Utilization of the Hospice Benefit	1 hour
Dec. 12, 2006	ADD and ADHD	1 hour
February 8, 2007	Radiofrequency Ablation in the Treatment of Lung Tumors	1 hour
March 8, 2007	New Frontiers in the Treatment of Rotator Cuff Injuries	1 hour
April 10, 2007	Spiritual Support in Health Care	1 hour

In 2006, respondent also completed online continuing education course for credit and in-house trainings through Sutter North Medical Foundation.

18. Respondent testified that she paid off one of her DUI fines, but is still making payments on the other one. Respondent's participation in the FIT program appears to satisfy her probation requirement of participating in an alcohol rehabilitation program.

Respondent's testimony demonstrated deep insight into the causes and consequences of her alcohol abuse, as well as knowledge of effective methods to maintain her sobriety. Respondent has rededicated herself to working with and being a good role model for her children and grandchildren; this connection is of great significance to her sobriety. Respondent does not keep alcohol in the house, but will occasionally attend social events where coworkers have alcohol. Respondent acknowledged that a social event or stress at work will occasionally give her the urge to drink, but she responds by using one of her relapse techniques. Respondent expressed her willingness to attend nurse support groups and to reconnect with AA support.

As acknowledged by the Board, on balance, respondent's conduct since August 2005 demonstrates that she has made significant strides toward rehabilitation. It would not be contrary to the public interest at this time to grant her a probationary license, subject to conditions itemized below.

19. *Costs:* Under Business and Professions Code section 125.3², the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In support of its request for costs, the Board filed a Certification of Prosecution Costs and Declaration of Jeffrey M. Phillips, supported by the Department of Justice's "matter time activity by professional type" printouts for this case, from November 2005 through February 25, 2008. By this declaration, the Board offered prima facie evidence that it incurred \$4,047 in costs of enforcement from the Department of Justice. (§ 125.3, subd. (c).)

Pursuant to *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, various factors must be considered in determining the amount of costs to be assessed. The Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the licensee's subjective good faith belief in the merits of his or her position, as well as whether the licensee has raised a colorable challenge to the proposed discipline. The Board must determine that the licensee will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct.

20. Respondent acknowledged responsibility for the convictions raised by the Board as a basis for disciplining her license. While respondent has provided evidence in mitigation to support granting her a probationary license, the penalty imposed is within the range of discipline initially sought by the Board in its Accusation. The Board's costs of investigation and enforcement are reasonable.

Respondent testified that she is the sole provider for her son, and does not receive financial assistance. She pays all of her bills, but essentially lives on a month-to-month basis. Respondent's court fines were not reduced based on her financial circumstances. Respondent is financially able to pay these costs, if she is provided with a reasonable payment plan. As she requested, respondent may establish a payment plan with the Board over the course of her probation to pay the ordered costs of \$4,047.

² Unless otherwise indicated, all statutory references are to the California Business and Professions Code.

CONCLUSIONS OF LAW

1. In an Accusation seeking to revoke, suspend, or otherwise discipline respondent's professional license, the Board has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal. App. 3d 853, 856.)

2. The Board is authorized to discipline "every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, . . . as provided in this article." (§ 2750.) The Board is not deprived of jurisdiction to proceed with disciplinary proceedings based up the lapsing or suspension of a license by operation of law or by order or decision of the Board or a court of law. (§ 2764.)

3. Pursuant to section 2761, the Board may take disciplinary action against a licensed nurse on any of the following grounds, including:

(a) Unprofessional conduct, . . . ,

[¶] . . . [¶]

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

4. Under Section 2762, it is unprofessional conduct for a licensed nurse to do any of the following:

(b) Use any . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

5. The Board has adopted disciplinary regulations, contained at California Code of Regulations, title 16, section 1442, et seq. These regulations provide that an act or conviction “shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.”(Cal. Code Regs., tit. 16, § 1444.) The regulation provides specific examples of substantially related convictions or acts. DUI convictions are not included; however, the regulation provides that substantially related convictions or acts are not limited to those examples.³

Respondent’s DUI convictions are substantially related to the qualifications, functions or duties of a registered nurse. Respondent’s two DUI convictions are evidence of her actual and potential unfitness to safely practice as a registered nurse. To a substantial degree, respondent’s convictions demonstrate her inability to control her use of alcohol to the extent that its use poses significant risks of harm to the public.

6. As set forth in Factual Findings 4 through 6 and Conclusions of Law 1 through 5, complainant has established by clear and convincing evidence that respondent engaged in unprofessional conduct under sections 2761, subdivisions (a) and (f), and 2762, subdivisions (b) and (c), by virtue of her excessive use of alcohol in a manner than endangered both herself and the public, and that resulted in multiple convictions involving the self-administration of alcohol in violation of laws designed to protect the public.

7. California Code of Regulations, title 16, section 1445, subdivision (b), establishes criteria to assist in determining whether to suspend or revoke the license of a nurse convicted of a crime as follows:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of

³ The specific examples provided are: assaultive or abusive conduct; failure to comply with any mandatory reporting requirements; theft, dishonesty, fraud, or deceit; or any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

8. California Code of Regulations, title 16, Section 1444.5, provides:

in reaching a decision on a disciplinary action under the Administrative Procedure Act . . . , the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation--for example: the presence of mitigating factors; the age of the case; evidentiary problems.

9. After considering the facts as a whole and the recommended guidelines, it would not be against the public interest to allow respondent to maintain a probationary license as a registered nurse, subject to conditions outlined below, for three years.

10. Pursuant to Business and Professions Code section 125.3, and as set forth in Factual Finding 19, complainant is entitled to be paid the reasonable costs of investigation and prosecution of this case, in the total amount of \$4,047, by the respondent. Respondent shall pay such costs pursuant to a reasonable payment plan as discussed below.

ORDER

It is hereby ordered that License Number 475558, issued to Cathey Gay Frazier, is REVOKED. However, the revocation is stayed and respondent is placed on probation for a period of three (3) years, subject to the following conditions:

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by

respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM -

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension. Upon successful completion of probation, respondent's license shall be fully restored.

(3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE -

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state. Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives. Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any nondirect patient care position that requires licensure as a registered nurse. The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board. Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment. In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved. Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool. Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term. Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$4,047. **Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.** If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If respondent violates the conditions of her probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license. If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation. Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of respondent's physical condition

and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan

BOARD OF REGISTERED NURSING

MAR 21 2008

recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate. Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(17) SUBMIT TO TESTS AND SAMPLES - Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation. In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(18) MENTAL HEALTH EXAMINATION - Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of respondent.

Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by respondent. If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period. If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(19) THERAPY OR COUNSELING PROGRAM - Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

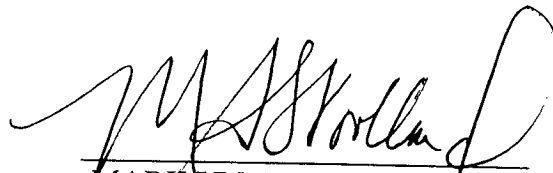
(20) RESTORATION UPON COMPLETION OF PROBATION - Upon successful completion of probation, respondent's license shall be fully restored.

BOARD OF REGISTERED NURSING

MAR 21 2008

SEVERABILITY CLAUSE – Each condition of probation contained above is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

DATED: March 18, 2008



MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS, State Bar No. 154990
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 322-8288

7 Attorneys for Complainant
8
9

10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 2007-201

14 **CATHEY GAY FRAZIER**
9340 Larkin Road
15 Live Oak, CA 95953

A C C U S A T I O N

16 Registered Nurse License No. 475558

17 Respondent.
18

19 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:
20

PARTIES

21 1. Complainant brings this Accusation solely in her official capacity as the
22 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
23 Affairs.

24 2. On or about January 22, 1993, the Board issued Registered Nurse License
25 Number 475558 to Cathey Gay Frazier ("Respondent"). The license will expire on
26 August 31, 2008, unless renewed.

27 ///

28 ///

JURISDICTION

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

5. Code section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

6. Code section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription, consumption, or
2 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
3 or the possession of, or falsification of a record pertaining to, the substances described in
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
5 thereof."

6 **COST RECOVERY**

7 7. Code section 125.3 provides, in pertinent part, that the Board may request
8 the administrative law judge to direct a licensee found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
10 and enforcement of the case.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Conviction of a Crime)**

13 8. Respondent is subject to discipline under Code section 2761,
14 subdivision (f) in that she was convicted of the following crimes that are substantially related to
15 the qualifications, functions and duties for which Respondent holds a license:

16 a. On or about October 22, 2002, in the case of *People v. Cathey Gay*
17 *Frazier*, (Super. Ct. Yolo County, Case No. 02006117), Respondent was convicted by the Court
18 on her plea of guilty of violating Vehicle Code section 23152, subdivision (b) which occurred on
19 or about September 30, 2002 (drove a motor vehicle while having 0.08 percent or more, by
20 weight, of alcohol in her blood), with special enhancement of violating Vehicle Code section
21 23578 (had a blood alcohol content of 0.20 percent or higher) with a prior conviction of October
22 30, 1995, for violating Vehicle Code section 23152, subdivision (a) (drove a motor vehicle while
23 having 0.08 percent or more, by weight of alcohol in her blood).

24 b. On or about January 23, 2003, in the case of *People v. Cathey Gay*
25 *Frazier*, (Super. Ct. Yuba County, Case No. CR-TR-020001874), Respondent was convicted by
26 the Court on her plea of guilty of violating Vehicle Code section 14601.5, subdivision (a) which
27 occurred on or about October 30, 2002, (drove a motor vehicle at a time when her driving
28 privileges were suspended or revoked).

1 c. On or about March 10, 2004, in the case of *People v. Cathey Gay Frazier*,
2 (Super. Ct. Yuba County, Case No. TR-03-248), Respondent was convicted by the Court on her
3 plea of nolo contendere of violating Vehicle Code section 23152, subdivision (a) which occurred
4 on or about February 1, 2003, (drove a motor vehicle while under the influence of an alcoholic
5 beverage and/or a drug or under the combined influence), with a prior conviction of October 22,
6 2002, as set forth above in subdivision (a).

7 d. On or about March 25, 2004, in the case of *People v. Cathey Gay Frazier*,
8 (Super. Ct. Sutter County, Case No. CR-TR-03-2834), Respondent was convicted by the Court
9 on her plea of guilty of violating Vehicle Code section 14601.5, subdivision (a) which occurred
10 on or about October 23, 2003, (drove a motor vehicle at a time when her driving privileges were
11 suspended or revoked), with a prior conviction of January 23, 2003, as more particularly set forth
12 above in subdivision (b).

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of Alcohol)**

15 9. Respondent is subject to discipline under Code section 2761,
16 subdivision (a) on the grounds of unprofessional conduct as defined in Code section 2762,
17 subdivision (b), in that on or about September 30, 2002, and February 1, 2003, Respondent used
18 alcoholic beverages to an extent or in a manner dangerous or injurious to herself and the public,
19 as more particularly set forth above in paragraph 8, subdivisions (a) and (c).

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Conviction Involving the Consumption of Alcohol)**

22 10. Respondent is subject to discipline under Code section 2761,
23 subdivision (a) on the grounds of unprofessional conduct as defined in Code section 2762,
24 subdivision (c), in that on or about October 22, 2002, and March 10, 2004, Respondent was
25 convicted of crimes involving the consumption of alcohol, as more particularly set forth above in
26 paragraph 8, subdivisions (a) and (c).

27 ///

28 ///

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 475558, issued to Cathey Gay Frazier;

2. Ordering Cathey Gay Frazier to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: 1/18/07


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SA2005104927

Accusation (kdg) 10/3/06